

REMARKS/ARGUMENTS

The Examiner is thanked for the review of the application.

Claims 1, 10, 11, 19 and 21-32 remain in this application. Claims 1 and 11 have been amended. No new matter has been added.

In the Office Action dated November 25, 2008 the Examiner rejected Claims 1, 10 and 21-26 under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In particular, the Examiner stated “Applicant's claims mentioned above are intended to embrace or overlap two different statutory classes of invention as set forth in 35 USC 101. The claims begin by discussing a computer environment (ex. preamble of claim 1), the body of the claim discusses the specifics of the computer readable code (see above rejection of claims under 35 USC 112, second paragraph, for specific details regarding this issue). ‘A claim of this type is precluded by the express language of 35 USC 101 which is drafted so as to set forth the statutory classes of invention in the alternative only’, Ex parte Lyell (17 USPQ2d 1548).”

Likewise, the Examiner continues by stating “As per claims 1, 10, and 21-26 the claims as recited appear to be directed to data structure, logic, or software for a computer. Thus, the claims are directed to functional descriptive material that is not functionally or structurally interrelated to any medium. *Data structures not claimed as embodied on statutory computer readable media (i.e., storage media, and excluding non-statutory media such as carrier waves) are descriptive material per se and therefore not patentable subject matter under § 101 as they are neither a process, a machine, a manufacture, nor a composition of matter. MPEP § 2106 IV.(g)(1)(a).*” (Original Emphasis).

Base Claim 1 has been amended to recite, in relevant part, “Computer readable code, embodied on a computer readable media, for computing a preferred set of prices for a plurality of products, comprising an optimization engine comprising computer readable media, comprising.”

The preamble, as amended, eliminates the reference to “a computer environment.” Additionally, the claimed computer readable code has been functionally or structurally related to a computer readable medium.

As such, Applicants believe that now a single statutory class is recited, and the claims are not descriptive material *per se*, thereby rendering the Examiner’s rejection moot. Thus, Applicants believe that Base claim 1, as amended, is novel, nonobvious and in allowable form. A notice of allowance is requested for Claim 1, and for claims 1, 10 and 21-26 which depend therefrom for at least the same reasons.

Additionally, Claims 11, 19 and 27-32 have been rejected by the Examiner under 35 U.S.C. 101 as being directed to a series of steps. Particularly, the Examiner states “In order for a series of steps to be considered a proper process under § 101, a claimed process must either: (1) be tied to another statutory class (such as a particular apparatus) or (2) transform underlying subject matter (such as an article or materials). *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972). Thus, to qualify as patent eligible, these processes must positively recite the other statutory class to which it is tied (e.g., by identifying the apparatus that accomplishes the method steps), or positively recite the subject matter that is being transformed (e.g., by identifying the product or material that is changed to a different state). Claims 11, 19, and 27-32 identify neither the apparatus performing the recited steps nor any transformation of underlying materials, and accordingly are directed to non-statutory subject matter.”

Claim 11 has been amended to recite, in relevant part “setting prices for the plurality of products to the preferred set of prices, wherein the setting prices for the plurality of products includes displaying the preferred set of prices on a display.”

Support for the amendment to Claim 11 may be found at page 12, lines 3-9 of the specification as filed, which states “The optimal (preferred) set of prices may be sent from the

optimization engine 112 to the support tool 116 so that the stores 124 may use the user interface of the support tool 116 to obtain the optimal set of prices. Other methods may be used to provide the optimal set of prices to the stores 124. The price of the products in the stores 124 is set to the optimal set of prices (step 236), so that a maximization of profit or another objective is achieved.”

Additional support for the amendment to Claim 11 may be found at page 98, lines 8-10 of the specification as filed, which states “The price calculator 408 outputs the optimized prices to the output display 416 of the support tool 116, which allows the stores 124 to receive the optimized pricing (step 232).”

By setting prices for products and displaying those prices, there has been a transformation of the underlying matter. Particularly, invoices, price lists and databases including pricing will be transformed by the setting of the preferred prices. The amount of money generated by the business will also be altered by the setting of prices, which is an ancillary transformation. By displaying the prices, be it a hardcopy price printout or an electronic display, the graphical representation update is a tangible and notorious physical transformation of a paper substrate, or electrical charges in a monitor.

Moreover, in the context of a computing system such as that described in some embodiments in the present specification, Applicants submit that a person of ordinary skill in the art would readily appreciate that practicable embodiments of the claimed invention would be conducted with the aid of a computing machine, such as a server. Such computing machines are commonly understood to have memory. Further, the operations recited in the claims clearly change the state of the underlying data since the cache, register, or other memory on which the data is stored must be transformed to have a different magnetic polarity, electrical charge, or the like depending on the technology that is used. These are real physical changes. Further, memory is a real physical article. As such, Applicants submit that the method claims perform a transformation under the “machine or transformation” test and thus qualify as patent-eligible subject matter.

As such, in light of the Applicants amendments to Claim 11 it is believed the Examiner's rejections under 35 U.S.C. 101 are moot. Further, Applicants believe that Claim 11, as amended, is now allowable. Claims 19 and 27-32 are also believed allowable for at least these reasons.

In sum, base claims 1 and 11 have been amended and are now believed to be allowable. Dependent claims 10, 19 and 21-32 which depend therefrom are also believed to be allowable as being dependent from their respective patentable parent claims 1 and 11 for at least the same reasons. Hence, Examiner's rejection of dependent Claims is rendered moot in view of the amendment to independent Claims 1 and 11. No new claims have been added. Applicants believe that all pending claims 1, 10, 11, 19 and 21-32 are now allowable over the cited art and are also in allowable form and respectfully request a Notice of Allowance for this application from the Examiner.

Application No. 09/888,340
Prel. Amdt. Dated March 25, 2009 accompanying RCE
Reply to Office Action of November 25, 2008

Applicants hereby petition the Examiner for a one-month extension of time with which to respond to the referenced Office Action and have authorized the commissioner via EFS to charge our credit card to pay for the RCE fee (\$810) and the extension of time fee (\$130). There are no additional claim fees. The commissioner is authorized to charge any additional fees that may be due or credit any overpayment to our Deposit Account No. 50-2766 (Order No. DEM1P007). Should the Examiner believe that a telephone conference would expedite the prosecution of this application, the undersigned can be reached at telephone number 925-570-8198.

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Respectfully submitted,

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